
# The Americans with Disabilities Act: Supreme Court Decisions

**Nancy Lee Jones**
Legislative Attorney

October 14, 2008

**Congressional Research Service**
7-5700
www.crs.gov
RL31401

**CRS Report for Congress**
*Prepared for Members and Committees of Congress*

# Summary

The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services operated by private entities, transportation, and telecommunications. Enacted in 1990, and amended in 2008 by P.L. 110-325, the ADA is a civil rights statute that has as its purpose "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." It has been the subject of numerous lower court decisions, and the Supreme Court has decided 20 ADA cases, most recently in 2006 *United States v. Georgia*. This report examines the Supreme Court decisions on the ADA. It will be updated as necessary.

# Contents



## Contacts

# Introduction and Background

The Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 *et seq.*, provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services operated by private entities, transportation, and telecommunications. Enacted in 1990 and amended in 2008 by P.L. 110-325, the ADA is a civil rights statute that has as its purpose "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[1]

The ADA has been the subject of numerous lower court decisions and the Supreme Court has decided 20 ADA cases. In the most recent Supreme Court decision, *United States v. Georgia*,[2] the Court held that title II of the ADA created a private cause of action for damages against the states for conduct that actually violated the Fourteenth Amendment. However, the Court did not reach the issue of whether the Eleventh Amendment permits a prisoner to secure money damages from a state for state actions that violate the ADA but not the Constitution. In the same term, the Supreme Court decided *Arbaugh v. Y. & H Corp.*,[3] a case under Title VII of the Civil Rights Act of 1964, which has implications for the ADA's prohibition of discrimination where employers employ 15 or more employees.

On December 7, 2007, the Supreme Court granted certiorari in *Huber v. Wal-Mart Stores*,[4] to determine whether an individual with a disability who cannot perform her current job must be reassigned to a vacant, equivalent position without competing with other workers. However, the Court dismissed the petition since the case was settled prior to oral argument. The Eighth Circuit Court of Appeals in *Huber* held that Wal-Mart was not required to automatically reassign her to the vacant position she wanted but could place another, better qualified, candidate in the position. Noting that Wal-Mart did place the plaintiff in a less lucrative position, the court of appeals stated that the plaintiff "was treated exactly as all other candidates were treated for the Wal-Mart job opening, no worse and no better."[5] Currently, there is a split in the circuits on this accommodation issue, and in light of the Court's dismissal of the case, there will continue to be divergent views.[6]

# Definition of Disability

## Statutory Language

The threshold issue in any ADA case is whether the individual alleging discrimination is an individual with a disability. The ADA's definition has been controversial and is the subject of

[1] 42 U.S.C. §12102(b)(1).

[2] 546 U.S. 151 (2006).

[3] *Arbaugh v. Y.& H. Corp.*, 546 U.S. 500 (2006).

[4] 486 F.3d 480 (8th Cir. 2007), *cert.* granted 2007 U.S. LEXIS 12943 (Dec. 7, 2007).

[5] *Id.* at 484.

[6] See e.g., *Smith v. Midland Brake, Inc.*, 180 F.3d 1154 (10th Cir. 1999), holding that a vacant position automatically goes to a qualified individual with a disability; *EEOC v. Humiston-Keeling, Inc.*, 227 F.3d 1024 (7th Cir. 2000), holding that an employer does not have to "turn away a superior applicant."

several Supreme Court cases, including *Sutton v. United Air Lines, Inc.*,[7] and *Toyota Motor Manufacturing v. Williams*.[8] The ADA Amendments Act of 2008, P.L. 110-325, rejected the Supreme Court's limited interpretations of the definition of disability in these cases.[9]

The ADA, as amended, defines the term disability with respect to an individual as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3))."[10] Although this is essentially the same statutory language as was in the original ADA, P.L. 110-325 contains new rules of construction regarding the definition of disability, which provide that

- the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the act;
- the term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act;
- an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
- an impairment that is episodic or in remission is a disability if it would have substantially limited a major life activity when active;
- the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered.[11]

The findings of the ADA Amendments Act include statements indicating that the Supreme Court decisions in *Sutton* and *Toyota* as well as lower court cases have narrowed and limited the ADA from what was intended by Congress. P.L. 110-325 specifically states that the current EEOC regulations defining the term "substantially limits" as "significantly restricted" are "inconsistent with congressional intent, by expressing too high a standard." The codified findings in the original ADA are also amended to delete the finding that "43,000,000 Americans have one or more physical or mental disabilities...." This finding was used in *Sutton* to support limiting the reach of the definition of disability.

The ADA Amendments Act states that the purposes of the legislation are to carry out the ADA's objectives of the elimination of discrimination and the provision of "'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection available under the ADA." P.L. 110-325 rejected the Supreme Court's holdings that mitigating measures are to be used in making a determination of whether an impairment substantially limits a major life activity as well as holdings defining the "substantially limits" requirements. The

[7] 527 U.S. 471 (1999).

[8] 534 U.S. 184 (2002).

[9] For a more detailed discussion of the ADA Amendments Act see CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by (name redacted).

[10] P.L. 110-325, §4(a), amending 42 U.S.C. §12102(3).

[11] Low vision devices are not included in the ordinary eyeglasses and contact lens exception.

substantially limits requirements of *Toyota* as well as the EEOC regulations defining substantially limits as "significantly restricted" are specifically rejected in the new law.

The third prong of the definition of disability covers individuals who are "regarded as having such an impairment (as described in paragraph (3))." Paragraph 3 states that "[a]n individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." However, impairments that are transitory and minor are specifically excluded from the "regarded" prong. A transitory impairment is one with an actual or expected duration of six months or less. The ADA Amendments Act also provides in a rule of construction in Title V of the ADA that a covered entity under Title I,[12] a public entity under Title II, or a person who operates a place of public accommodation under Title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability solely under the "regarded as" prong of the definition.[13]

The Supreme Court in *Sutton* questioned the authority of regulatory agencies to promulgate regulations for the definition of disability in the ADA. The definition of disability is contained in Section 3 of the ADA, and the ADA does not specifically give any agency the authority to interpret the definitions in Section 3, including the definition of disability. The Supreme Court declined to address this issue since, as both parties to *Sutton* accepted the regulation as valid, "we have no occasion to consider what deference they are due, if any." The ADA Amendments Act specifically grants regulatory authority and states that "[t]he authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act, includes the authority to issue regulations implementing the definitions contained in sections 3 and 4."

## Supreme Court Decisions

The first ADA case to address the interpretation of the definition of disability was *Bragdon v. Abbott*, a case involving a dentist who refused to treat an HIV infected individual outside of a hospital.[14] In *Bragdon*, the Court found that the plaintiff's asymptomatic HIV infection was a physical impairment impacting on the major life activity of reproduction thus rendering HIV infection a disability under the ADA.

Two other cases the Court has decided on the definitional issue involved whether the effects of medication or assistive devices should be taken into consideration in determining whether or not an individual has a disability. The Court in *Sutton v. United Air Lines*[15] and in *Murphy v. United*

[12] Title I of the ADA covers employment, Title II covers states and localities, and Title III covers places of public accommodations such as grocery stores, doctors' offices, and movie theaters.

[13] Under previous law, the circuits were split on whether there is a duty to accommodate a "regarded as" plaintiff. See e.g., *D'Angelo v.ConAgra Foods, Inc.*, 422 F.3d 1220 (11th Cir. 2005)(duty to accommodate); *Kaplan v. City of North Las Vegas*, 323 F.3d 1226 (9th Cir. 2003), cert. denied, 540 U.S. 1049 (2003)(no duty to accommodate).

[14] 524 U.S. 624 (1998). For a more detailed discussion of this decision see CRS Report 98-599, *The Americans with Disabilities Act: HIV Infection is Covered Under the Act*.

[15] 527 U.S. 471 (1999).

*Parcel Service, Inc,*[16] held the "determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment...."[17] In *Albertsons Inc. v. Kirkingburg*[18] the Court held unanimously that the ADA requires proof that the limitation on a major life activity by the impairment is substantial. The Court held in *Toyota Motor Manufacturing v. Williams,*[19] that to be an individual with a disability under the act, an individual must have substantial limitations that are central to daily life, not just limited to a particular job. The holdings of all these decisions have been changed by the enactment of the ADA Amendments Act, P.L. 110-325.

# Employment

## Coverage of Employers

Title I of the ADA provides that no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.[20] The term *employer* is defined as a person engaged in an industry affecting commerce who has 15 or more employees.[21] Therefore, the employment section of the ADA, unlike the section on public accommodations which does not have this limit, is limited in scope to employers with 15 or more employees. This parallels the coverage provided in the Civil Rights Act of 1964. Title VII, like the ADA, prohibits employment discrimination only where employers employ 15 or more employees. In an unanimous decision in *Arbaugh v. Y. & H. Corp.*,[22] the Court held that the 15-employee limitation in title VII of the Civil Rights Act[23] was not jurisdictional, but rather was related to the substantive adequacy of a claim. Thus, if the defense that the employer employs fewer than 15 employees is not raised in a timely manner, a court is not obligated to dismiss the case. Since the ADA's 15- employee limitation language parallels that of Title VII, it is likely that a court would interpret the ADA's requirement in the same manner.

The Supreme Court examined the definition of the term "employee" under the ADA in *Clackamas Gastroenterology Associates P.C. v. Wells.*[24] In *Clackamas,* the Court held in a 7-2 decision written by Justice Stevens, that the EEOC's guidelines concerning whether a shareholder-director is an employee were the correct standard to use. Since the evidence was not clear, the case was remanded for further proceedings.

---

[16] 527 U.S. 516 (1999).

[17] *Sutton v. United Airlines.* See also *Murphy v. United Parcel Service,* where the Court held that the determination of whether the petitioner's high blood pressure substantially limits one or more major life activities must be made considering the mitigating measures he employs.

[18] 527 U.S. 555 (1999).

[19] 534 U.S. 184 (2002).

[20] 42 U.S.C. §12112(a).

[21] 42 U.S.C. §12111(5).

[22] *Arbaugh v. Y.& H. Corp.,* 546 U.S. 500 (2006).

[23] 42 U.S.C. §2000e(b).

[24] 538 U.S. 440 (2003).

Clackamas Gastroenterology Associates is a medical clinic in Oregon that employed Ms. Wells as a bookkeeper from 1986-1997. After her termination from employment, Ms. Wells brought an action alleging unlawful discrimination on the basis of disability under Title I of the ADA. The clinic denied that it was covered by the ADA since it argued that it did not have 15 or more employees for the 20 weeks per year required by the statute. The determination of coverage was dependent on whether the four physician-shareholders who owned the professional corporation were counted as employees.

The Court first looked to the definition of employee in the ADA which states that an employee is "an individual employed by an employer."[25] This definition was described as one which is "completely circular and explains nothing." The majority then looked to common law, specifically the common law element of control. This was the position advocated by the EEOC. The EEOC has issued guidelines which list six factors to be considered in determining whether the individual acts independently and participates in managing the organization or whether the individual is subject to the organization's control and therefore an employee. These six factors are: "Whether the organization can hire or fire the individual or set the rules and regulations of the individual's work; Whether and, if so, to what extent the organization supervises the individual's work; Whether the individual reports to someone higher in the organization; Whether and, if so, to what extent the individual is able to influence the organization; Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts; and whether the individual shares in the profits, losses, and liabilities of the organization."[26]

Justice Stevens, writing for the majority, found that some of the district court's findings of fact, when considered in light of the EEOC's standard, appeared to favor the conclusion that the four physicians were not employees of the clinic. However, since there was some evidence that might support the opposite conclusion, the Court remanded the case for further proceedings.

Justice Ginsburg, joined by Justice Breyer, dissented from the majority's opinion. The dissenters argued that the Court's opinion used only one of the common-law aspects of a master-servant relationship. In addition, Justice Ginsburg noted that the physician-shareholders argued they were employees for the purposes of other statutes, notably the Employee Retirement Income Security Act of 1974 (ERISA) and stated "I see no reason to allow the doctors to escape from their choice of corporate form when the question becomes whether they are employees for the purposes of federal antidiscrimination statutes."

## Direct Threat

Once an ADA employment case has advanced past the threshold questions of whether the plaintiff is an individual with a disability, and whether the employer in question employs 15 or more employees, the next set of issues involve whether the individual can perform the essential functions of the job in question with or without reasonable accommodation. The qualifications standards used may also include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace. [27] Title III contains a similar provision

[25] 42 U.S.C. §12111(4).

[26] EEOC Compliance Manual §605:0009.

[27] 42 U.S.C. §§12112-12113.

stating that an entity does not have to permit an individual to participate in or benefit from the services of the entity where the individual poses a direct threat to the health or safety of others.[28]

In *Bragdon v. Abbott* the Court dealt with this issue in the Title III (public accommodations) context and found that the ADA does not require that an entity permit an individual to participate in or benefit from the services of a public accommodation where such an individual poses a direct threat to the health or safety of others.[29] The Court determined that there is a duty to assess the risk of infection "based on the objective, scientific information available" and that a "belief that a significant risk existed, even if maintained in good faith, would not relieve him from liability." The Court remanded the case for consideration of the weight to be given to various pieces of evidence relating to the direct threat issue and on remand the court of appeals for the first circuit concluded that the defendant had produced no legitimate scientific evidence to show that providing routine dental care would subject him to a significant risk of contacting HIV.[30] The Supreme Court denied certiorari on May 24, 1999.[31]

Although the Court in *Albertsons, Inc. v. Kirkingburg* did not specifically address the direct threat language, it dealt with a related concept concerning federal safety regulations. In *Albertsons*, the Court held that an employer who requires an employee as part of a job qualification to meet applicable federal safety regulations does not have to justify enforcing those regulations, even if there is an experimental waiver program.

The Supreme Court again dealt with the direct threat concept but in the context of Title I of the ADA regarding employment in *Chevron U.S.A. Inc., v. Echazabal*.[32] The Court held unanimously in *Echazabal* that the ADA does not require an employer to hire an individual with a disability if the job in question would endanger the individual's health. The Court upheld a regulation by the Equal Employment Opportunity Commission (EEOC) that allows an employer to assert a direct threat defense to an allegation of employment discrimination where the threat is posed only to the health or safety of the individual making the allegation.[33] The ADA's statutory language provides for a defense to an allegation of discrimination that a qualification standard is "job related and consistent with business necessity."[34] The act also allows an employer to impose as a qualification standard that the individual shall not pose a direct threat to the health or safety of other individuals in the workplace[35] but does not discuss a threat to the individual's health or safety. The ninth circuit in *Echazabal* had determined that an employer violated the ADA by refusing to hire an applicant with a serious liver condition whose illness would be aggravated through exposure to the chemicals in the workplace.[36]

After a review of the factual background, the Court's decision in *Echazabal* analyzed the statutory and regulatory language finding that the statutory provisions discussed above were "spacious defensive categories, which seem to give an agency (or in the absence of agency action,

[28] 42 U.S.C. §12182(3).

[29] 42 U.S.C. §12182(b)(3).

[30] *Abbott v. Bragdon*, 163 F.3d 87 (1st Cir. 1998).

[31] 526 U.S. 1131 (1999).

[32] 536 U.S. 73 (2002).

[33] 29 C.F.R. §1630.15(b)(2).

[34] 42 U.S.C. §12113(a).

[35] 42 U.S.C. §12113(b).

[36] 226 F.3d 1063 (9th Cir. 2000).

a court) a good deal of discretion in setting the limits of permissible qualification standards." In support of the EEOC regulations, the Court noted that Congress used language identical to that in the Rehabilitation Act "knowing full well" that the EEOC had interpreted that language to recognize threats to self. Justice Souter, writing for the Court observed that the ADA's language was not intended to define all the defenses available to an employer. "When Congress specified threats to others in the workplace...could it possibly have meant that an employer could not defend a refusal to hire when an worker's disability would threaten others outside the workplace? If Typhoid Mary had come under the ADA, would a meat packer have been defenseless if Mary had sued after being turned away?"

The Court then turned to the issue of whether the EEOC had sufficient statutory basis for its regulatory interpretation. Finding that "Chevron's reasons for calling the regulation reasonable are unsurprising: moral concerns aside, it wishes to avoid time lost to sickness, excessive turnover from medical retirement or death, litigation under state tort law, and the risk of violating the national Occupational Safety and Health Act of 1970...." In addition, Justice Souter found that the EEOC regulations were not the kind of workplace paternalism that the ADA seeks to outlaw. "The EEOC was certainly acting within the reasonable zone when it saw a difference between rejecting workplace paternalism and ignoring specific and documented risks to the employee himself, even if the employee would take his chances for the sake of getting a job." The Court emphasized that a direct threat defense must be based on medical judgment that uses the most current medical knowledge.

The Supreme Court had examined an analogous issue in *UAW v. Johnson Controls, Inc.*,[37] which held that under the Civil Rights Act of 1964 employers could not enforce "fetal protection" policies that kept women, whether pregnant or with the potential to become pregnant, from jobs that might endanger a developing fetus. Although this case was raised by the plaintiff, the Supreme Court distinguished the decision there from that in *Echazabal*. The *Johnson Controls* decision was described as "concerned with paternalistic judgments based on the broad category of gender, while the EEOC has required that judgments based on the direct threat provision be made on the basis of individualized risk assessments."

The Supreme Court reversed and remanded the lower court decision. On remand the district court entered summary judgment in favor of the employer and the ninth circuit reversed.[38] The ninth circuit emphasized the individualized nature of the inquiry and found that Chevron was required "to do more than consider generalized statements of potential harm."[39]

## Rehiring of Individuals Who Had Been Terminated for Illegal Drug Use

In *Raytheon Co. v. Hernandez,*[40] the Supreme Court was presented with the issue of whether the ADA confers preferential rehiring rights on employees who have been lawfully terminated for misconduct, in this case illegal drug use. However, the Court, in an opinion by Justice Thomas, did not reach this issue, finding that the ninth circuit had improperly applied a disparate impact

[37] 499 U.S. 187 (1991).

[38] *Echazabal v. Chevron,* 336 F.3d 1023 (9th Cir. 2003).

[39] *Id.* at 1030.

[40] 540 U.S. 44 (2003).

analysis in a disparate treatment case and remanding the case. The Court observed that it "has consistently recognized a distinction between claims of discrimination based on disparate treatment and claims of discrimination based on disparate impact." Disparate treatment was described as when an employer treats some people less favorably than others because of a protected characteristic such as race, and liability depends on whether the protected trait actually motivated the employer's decision. Disparate impact, in contrast, involves practices that are facially neutral but in fact impact a protected group more harshly and cannot be justified by business necessity. Disparate impact cases do not required evidence of an employer's subjective intent.[41]

## Collective Bargaining Agreements

In *Wright v. Universal Maritime Service Corp.*,[42] a unanimous Court held that the general arbitration clause in a collective bargaining agreement does not require a plaintiff to use the arbitration procedure for an alleged violation of the ADA. The Court's decision was limited since it did not find it necessary to reach the issue of the validity of a union-negotiated waiver. In other words, the Court found that a general arbitration agreement in a collective bargaining agreement is not sufficient to waive rights under civil rights statutes. The Court did not reach situations where collective bargaining agreements are very specific in requiring arbitration for alleged violations of civil rights statutes.

## Reasonable Accommodations and Seniority Systems

The Supreme Court in *U.S. Airways v. Barnett*[43] held that an employer's showing that a requested accommodation by an employee with a disability conflicts with the rules of a seniority system is ordinarily sufficient to establish that the requested accommodation is not "reasonable" within the meaning of the ADA. The Court, in a majority opinion by Justice Breyer, observed that a seniority system, "provides important employee benefits by creating, and fulfilling, employee expectations of fair, uniform treatment" and that to require a "typical employer to show more than the existence of a seniority system might undermine the employees' expectations of consistent, uniform treatment." Thus, in most cases, the existence of a seniority system would entitle an employer to summary judgment in its favor.

The Court found no language in the ADA which would change this presumption if the seniority system was imposed by management and not by collective bargaining. However, Justice Breyer found that there were some exceptions to this rule for "special circumstances" and gave as examples situations where (1) the employer "fairly frequently" changes the seniority system unilaterally, and thereby diminishes employee expectations to the point where one more departure would "not likely make a difference" or (2) the seniority system contains so many exceptions that one more exception is unlikely to matter.

Although the majority in *Barnett* garnered five votes, the Court's views were splintered. There were strong dissents and two concurring opinions. In her concurrence, Justice O'Connor stated

[41] Upon review, the Ninth Circuit Court of Appeals reversed and remand the district court's grant of the employer's motion for summary judgment. *Hernandez v. Hughes Missile Systems Co.*, 362 F.3d 564 (9th Cir. 2004).

[42] 525 U.S. 70 (1998).

[43] 535 U.S. 391 (2002).

that she would prefer to say that the effect of a seniority system on the ADA depends on whether the seniority system is legally enforceable but that since the result would be the same in most cases as under the majority's reasoning, she joined with the majority to prevent a stalemate. The dissents took vigorous exception to the majority's decision, with Justice Scalia, joined by Justice Thomas, arguing that the ADA does not permit any seniority system to be overridden. The dissent by Justice Souter, joined by Justice Ginsberg, argued that nothing in the ADA insulated seniority rules from a reasonable accommodation requirement.

### Receipt of SSDI Benefits

In *Cleveland v. Policy Management Systems Corp.*, the Supreme Court unanimously held that pursuit and receipt of SSDI benefits does not automatically stop a recipient from pursuing an ADA claim or even create a strong presumption against success under the ADA.[44] Observing that the Social Security Act and the ADA both help individuals with disabilities but in different ways, the Court found that "despite the appearance of conflict that arises from the language of the two statutes, the two claims do not inherently conflict to the point where courts should apply a special negative presumption like the one applied by the Court of Appeals here." The fact that the ADA defines a qualified individual as one who can perform the essential functions of the job with or without reasonable accommodation was seen as a key distinction between the ADA and the Social Security Act. In addition, the Court observed that SSDI benefits are sometimes granted to individuals who are working.

However, although these distinctions between the two statutes would rule out a special legal presumption, the Court did note that in some cases an earlier SSDI claim may genuinely conflict with an ADA claim. Therefore, if an individual has asserted that he or she is unable to work in an application for SSDI benefits, this may negate the ADA requirement that the individual with a disability be able to perform the essential functions of the job. For that reason the Court held that "an ADA plaintiff cannot simply ignore the apparent contradiction that arises out of the earlier SSDI total disability claim. Rather, she must proffer a sufficient explanation." Since the parties to the case in *Cleveland* did not have the opportunity to examine the plaintiff's contentions in court, the case was vacated and remanded for further proceedings.

## Community Placement and Individuals with Mental Disabilities

In *Olmstead v. Georgia*,[45] the Supreme Court held that Title II of the ADA requires states to place individuals with mental disabilities in community settings rather than institutions when the State's treatment professionals have determined that community placement is appropriate, community placement is not opposed by the individual with a disability, and the placement can be reasonably accommodated. "Unjustified isolation...is properly regarded as discrimination based on disability." The *Olmstead* case had been closely watched by both disability groups and state governments. Although disability groups have applauded the holding that undue institutionalization qualifies as discrimination by reason of disability, the Supreme Court did

[44] 526 U.S. 795 (1999).

[45] 527 U.S. 581 (1999).

place certain limitations on this right. In addition to the agreement of the individual affected, the Court also dealt with the issue of what is a reasonable modification of an existing program and stated: "Sensibly construed, the fundamental-alteration component of the reasonable-modifications regulation would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities." This examination of what constitutes a reasonable modification may have implications for the interpretation of similar concepts in the employment and public accommodations Titles of the ADA.

# Application of the ADA to State Prisons

In *Pennsylvania Department of Prisons v. Yeskey*,[46] the Court found that state prisons were covered under Title II of the ADA. The state had argued that state prisoners were not covered since such coverage would "alter the usual constitutional balance between the States and Federal Government." The Supreme Court rejected this argument, observing that "the ADA plainly covers state institutions *without* any exception that could cast the coverage of prisons into doubt." The Supreme Court addressed issues involving prisoners under the ADA in *Yeskey* holding that state prisons are within the ADA's statutory definition of "public entity," but did not address the constitutional issues. These may be addressed next term in the pending decision of *United States v. Georgia* which raises the issue of whether Congress has validly abrogated State immunity from damage suits under Title II of the ADA in situations involving accommodations for prisoners with disabilities.

# Eleventh Amendment Issues

The Eleventh Amendment states: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The Supreme Court has found that the Eleventh Amendment applies to suits by citizens against their own states[47] and cannot be abrogated by the use of Article I powers but that section 5 of the Fourteenth Amendment can be used for abrogation in certain circumstances. Section 5 of the Fourteenth Amendment states: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

The circumstances where section 5 of the Fourteenth Amendment can be used to abrogate the Eleventh Amendment have been discussed in various Supreme Court decisions which reiterated the principle that the Congress may abrogate state immunity from suit under the Fourteenth Amendment and found that there were several conditions necessary for successful abrogation.

- Congressional power is limited to the enactment of "appropriate" legislation to enforce the substantive provisions of the Fourteenth Amendment.
- The legislation must be remedial in nature.

[46] 524 U.S. 206 (1998).

[47] See e.g., *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 72-73 (2000).

- There must be a "congruence and proportionality" between the injury to be prevented and the means adopted to that end.[48]

In recent years, the Supreme Court has examined numerous statutes to determine whether they properly abrogated the Eleventh Amendment and, in most cases, found the statutes lacking.[49] However, the Court's federalism doctrine has been somewhat reined in by the recent decisions in *Tennessee v. Lane* (discussed below) and *Nevada Dept. of Human Resources v. Hibbs*,[50] which upheld the Family and Medical Leave Act[51] as a valid exercise of congressional power pursuant to section 5 of the Fourteenth Amendment. The limited nature of these holdings renders their application to other as yet untried aspects of the ADA regarding the Eleventh Amendment unclear. The Court's recent decision in *United States v. Georgia*,[52] raised the issue of whether Congress had validly abrogated State immunity from damage suits under Title II of the ADA in situations involving accommodations for prisoners with disabilities but the Court decided the case on more narrow grounds, holding only that title II of the ADA created a private cause of action for damages against the states for conduct that actually violated the Fourteenth Amendment.

The Supreme Court addressed issues involving prisoners under the ADA in *Pennsylvania Department of Corrections v. Yeskey*[53] where the Court held that state prisons are within the ADA's statutory definition of "public entity" but did not reach the constitutional issues. *United States v. Georgia* involved the claims of a Georgia prisoner who is paraplegic and uses a wheelchair. The inmate claimed that he was confined for 23-24 hours a day to a cell so small that he was unable to maneuver his wheelchair. In addition, he argued that he was deprived of access to a toilet, and a shower and was forced to sit in his own bodily waste because prison officials refused to provide assistance. These conditions, he argued, violated the Eighth Amendment's prohibition on cruel and unusual punishment and the ADA. The Eleventh Circuit Court of Appeals did not address the sufficiency of the claim under title II of the ADA but found that the title II claims for monetary damages against the state were barred by sovereign immunity.

The Supreme Court, in an unanimous opinion written by Justice Scalia, held that title II of the ADA created a private cause of action for damages against the states for conduct that actually violates the Fourteenth Amendment. In arriving at this holding, the Court noted that the plaintiff's claims for money damages under the ADA were based in large part on violations of section 1 of the Fourteenth Amendment and observed that this differed from other cases regarding the Eleventh Amendment such as *Tennessee v. Lane*. Justice Scalia recognized that the Supreme Court has been split "regarding the scope of Congress's 'prophylactic' enforcement powers under §5 of the Fourteenth Amendment," but found common ground in the recognition of section 5 powers to enforce the provisions of the Fourteenth Amendment by creating private remedies against actual violations of these provisions. Thus, Justice Scalia concluded for the Court, "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violated the Fourteenth Amendment, Title II validly abrogates state sovereign immunity."

---

[48] See e.g., *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank*, 527 U.S. 627 (1999).

[49] For a discussion of federalism generally see CRS Report RL30315, *Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power*.

[50] 538 U.S. 721 (2003).

[51] 29 U.S.C. §2601 et seq.

[52] 546 U.S. 151 (2006).

[53] 524 U.S. 206 (1998). This case was discussed in more detail previously.

*United States v. Georgia* is a limited decision which does not address the split in the Supreme Court regarding when there is abrogation of the Eleventh Amendment under the ADA.

In *Tennessee v. Lane*,[54] the Supreme Court retreated somewhat from its recent approaches to the application of the Eleventh Amendment, holding that Title II of the ADA, as it applies to the fundamental right of access to the courts, constitutes a valid exercise of congressional authority under section 5 of the Fourteenth Amendment. *Lane* was an action brought by George Lane and Beverly Jones, both paraplegics who use wheelchairs for mobility, against Tennessee. Mr. Lane alleged that he was compelled to appear in court to answer criminal charges and had to crawl up two flights of stairs to get to the court room. Ms. Jones, a certified court reporter, alleged that she was unable to gain access to a number of county courthouses, thus losing employment opportunities. In a 5-4 decision, with the opinion written by Justice Stevens, the Court noted that when analyzing an Eleventh Amendment immunity issue, two questions must be resolved: (1) whether Congress unequivocally expressed its intent to abrogate; and (2), if so, whether it acted pursuant to a valid grant of congressional authority. The ADA specifically provides for abrogation[55] so the Court then applied the test set out in *City of Boerne v. Flores*,[56] which found that legislation enacted pursuant to section 5 of the Fourteenth Amendment is valid if it had "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end."[57]

Justice Stevens' opinion found that Title II of the ADA, like Title I, sought to prohibit irrational discrimination but noted that Title II also sought to enforce a variety of basic constitutional guarantees, including the right of access to the courts. Noting the pattern of disability discrimination that led to the enactment of the ADA, and the "sheer volume of evidence demonstrating the nature and extent of unconstitutional discrimination against persons with disabilities in the provision of public services," the Court held that the inadequate provisions of public services and access to public facilities was an appropriate subject for remedial prophylactic legislation. The final issue was whether Title II was an appropriate response to this history and pattern of discrimination. Although the Court had been urged to consider the entire sweep of Title II, Justice Stevens declined to broaden the ruling beyond the issue of the accessibility of judicial services. The Court held that the remedies were congruent and proportional to the goal of enforcing the right of access to the courts and emphasized that the Title II of the ADA requires only "reasonable modifications" that would not fundamentally alter the nature of the service provided and that do not impose an undue financial or administrative burden, or threaten historic preservation interests. Thus, the Court concluded, Title II "as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' §5 authority to enforce the guarantees of the Fourteenth Amendment."

The *Lane* decision was close, 5-4, with two concurring opinions and a dissenting opinion written by Chief Justice Rehnquist. It is also limited in its scope. Although the Chief Justice argued in his dissenting opinion that Title II of the ADA ought to be considered as a whole, not on a case-by-case basis, the majority disagreed and reached a finding of constitutionality on the specific issue of the accessibility of judicial services. The majority's emphasis on detailed fact finding in the

[54] 541 U.S. 509 (2004).

[55] 42 U.S.C. §12202.

[56] 521 U.S. 507 (1997).

[57] *Id.* at 520.

legislative history and its statement in the ADA's findings and purposes[58] indicates how crucial these facts are to proper abrogation of the Eleventh Amendment. In addition, the Court's emphasis on the constitutional rights involved in the access to courts indicates that cases which do not involve such rights may not pass constitutional muster in subsequent decisions.

In a previous decision on Title I of the ADA, the Supreme Court reached a different conclusion regarding abrogation. In *Garrett v. University of Alabama,*[59] another 5-4 decision, the Court held that the Eleventh Amendment bars suits to recover monetary damages by state employees under Title I of the Americans with Disabilities Act (ADA). The majority opinion in *Garrett* stated that "Congress is the final authority as to desirable public policy, but in order to authorize private individuals to recover money damages against the States, there must be a pattern of discrimination by the States which violates the Fourteenth Amendment, and the remedy imposed by Congress must be congruent and proportional to the targeted violation. Those requirements are not met here...." A strong dissent by Justice Breyer, joined by Justices Stevens, Souter and Ginsburg, argued that the majority ignored powerful evidence of discriminatory treatment.

# Fundamental Alterations

Title III of the ADA prohibits discrimination against individuals with disabilities in places of public accommodations, including golf courses.[60] In *PGA Tour v. Martin*, the Supreme Court held, 7-2, that professional golf tours are covered by Title III and that use of a golf cart by a golfer with a mobility impairment did not "fundamentally alter" the golf tournaments. Justice Stevens, writing for the majority, found that "under the ADA's basic requirement that the need of a disabled person be evaluated on an individual basis, we have no doubt that allowing Martin to use a golf cart would not fundamentally alter the nature of petitioner's tournaments." Justice Scalia, joined by Justice Thomas, wrote a scathing dissent arguing that the majority distorted "the text of Title III, the structure of the ADA, and common sense."

# Application of the ADA to Cruise Ships

The Supreme Court in *Spector v. Norwegian Cruise Line, Ltd.* held, in a decision written by Justice Kennedy, that the ADA applies to companies that operate foreign cruise ships in U.S. waters.[61] Prior to this decision there had been a split in the circuits with the eleventh circuit holding in *Stevens v. Premier Cruises Inc.*[62] that Title III of the ADA does apply to foreign cruise ships and the fifth circuit in *Spector v. Norwegian Cruise Lines*[63] holding that the ADA would not be applicable since applicability would impose U.S. law on foreign nations.

[58] 42 U.S.C. §12101(a)(3).

[59] For a more detailed discussion of *Garrett*, see CRS Report RS20828, *University of Alabama v. Garrett: Federalism Limits on the Americans with Disabilities Act*, by (name redacted).

[60] 42 U.S.C. §§12181-12182.

[61] 545 U.S. 119 (2005).

[62] 215 F.3d 1237 (11th Cir. 2000), rehearing and rehearing en banc denied, 284 F.3d 1187 (11th Cir. 2002).

[63] 356 F.3d 641 (5th Cir. 2004).

The Supreme Court's decision specifically held that the statute is applicable to foreign ships in the United States waters to the same extent that it is applicable to American ships in those waters. The majority concurred that cruise ships need not comply with the ADA if modifications would conflict with international legal obligations since the ADA only requires "readily achievable" accommodations. The 5-4 decision, however, was fragmented with various Justices joining for various aspects of the opinion. It is difficult, therefore, to determine exactly what type of accommodations would be required by the application of the ADA. Since the case below had been dismissed without a trial, it was remanded to determine the statutory requirements in this particular situation. The question of whether Title III requires any permanent and significant structural modifications that interfere with the international affairs of any cruise ship, foreign flag or domestic, was specifically left undecided. Justice Scalia, in his dissenting opinion, argued that the ADA should not be interpreted to apply in the absence of a clear statement from Congress.

# Attorneys' Fees and Damages

The ADA allows a court, in its discretion, to award attorneys' fees to a prevailing party.[64] In *Buckhannon Board and Care Home, Inc., v. West Virginia Department of Human Resources*,[65] the Supreme Court addressed the "catalyst theory" of attorneys' fees which posits that a plaintiff is a prevailing party if the lawsuit brings about a voluntary change in the defendant's conduct. The Court rejected this theory finding that attorneys' fees are only available where there is a judicially sanctioned change in the legal relationship of the parties.

The Supreme Court in *Barnes v. Gorman*[66] held in a unanimous decision that punitive damages may not be awarded under Section 202[67] of the ADA and Section 504 of the Rehabilitation Act of 1973.[68] Jeffrey Gorman uses a wheelchair and lacks voluntary control over his lower torso which necessitates the use of a catheter attached to a urine bag. He was arrested in 1992 after fighting with a bouncer at a nightclub and during his transport to the police station suffered significant injuries due to the manner in which he was transported. He sued the Kansas City police and was awarded over $1 million in compensatory damages and $1.2 million in punitive damages. The Eighth Circuit Court of Appeals upheld the award of punitive damages but the Supreme Court reversed. Although the Court was unanimous in the result, there were two concurring opinions and the concurring opinion by Justice Stevens, joined by Justices Ginsburg and Breyer, disagreed with the reasoning used in Justice Scalia's opinion for the Court.

Justice Scalia observed that the remedies for violations of both Section 202 of the ADA and Section 504 of the Rehabilitation Act are "coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964."[69] Neither Section 504 nor Title II of the ADA specifically mention punitive damages, rather they reference the remedies of

[64] 42 U.S.C. §12205.

[65] 532 U.S. 598 (2001).

[66] 536 U.S. 181 (2002).

[67] 42 U.S.C. §12132. Section 203, 42 U.S.C. §12133, contains the enforcement provisions.

[68] 29 U.S.C. §794. Section 504 in relevant part prohibits discrimination against individuals with disabilities in any program or activity that receives federal financial assistance. The requirements of Section 504, its regulations, and judicial decisions were the model for the statutory language in the ADA where the nondiscrimination provisions are not limited to entities that receive federal financial assistance.

[69] 42 U.S.C. §2000d *et seq.*

Title VI of the Civil Rights Act. Title VI is based on the congressional power under the Spending Clause[70] to place conditions on grants. Justice Scalia noted that Spending Clause legislation is "much in the nature of a contract" and, in order to be a legitimate use of this power, the recipient must voluntarily and knowingly accept the terms of the "contract." "If Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously."[71] This contract law analogy was also found to be applicable to determining the scope of the damages remedies and, since punitive damages are generally not found to be available for a breach of contract, Justice Scalia found that they were not available under Title VI, Section 504 or the ADA.

The exact implications of *Gorman* are not clear. Justice Stevens argued that the reasoning used in Justice Scalia's opinion has "potentially far-reaching consequences that go well beyond the issues briefed and argued in this case"; although he also noted that Justice Scalia did "cabin the potential reach of today's decision by stating that we do not imply, for example, that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise."

## Author Contact Information

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

[70] U.S. Const., Art. I §8, cl.1.

[71] *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981).